

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DONETTA J. BRIGGS

Claimant

VS.

MCI WORLDCOM

Respondent

AND

ZURICH US INSURANCE COMPANY

Insurance Carrier

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Docket No. 1,003,978

ORDER

Respondent and its insurance carrier appealed the June 23, 2005, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

Claimant alleges she injured her back working for respondent between September 2000 and November 11, 2001, due to a series of micro-traumas. This claim has been before the Board on numerous occasions for review of earlier preliminary hearing Orders.

One of the Board's most recent Orders, dated December 23, 2004, determined claimant's back injury and surgery resulted from an accident that arose out of and in the course of claimant's employment with respondent.

Respondent and its insurance carrier requested the latest preliminary hearing, which was held on June 23, 2005, to present additional evidence to challenge claimant's contention that she injured her back at work from simultaneously standing and bending while inputting data into a computer.

In the June 23, 2005, Order, Judge Clark denied respondent and its insurance carrier's application to terminate claimant's preliminary hearing benefits. That Order recites no specific findings.

Respondent and its insurance carrier contend Judge Clark erred. They request the Board to review its earlier preliminary hearing findings in light of the more recent medical

opinions from Dr. Paul S. Stein and Dr. Robert L. Eyster and to terminate claimant's preliminary hearing benefits.

Conversely, claimant argues the June 23, 2005, Order should be affirmed.

The only issue before the Board on this appeal is whether claimant injured her back working for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the June 23, 2005, Order should be affirmed.

The principal issue in this claim is whether the bending claimant performed at work while inputting data into respondent's computer aggravated a preexisting condition of degenerative disc disease in her lumbar spine. Although there was some testimony from claimant's former supervisor, Margaret Bufford, that she did not require her sales representatives to stand and perform their job selling long distance services, the greater weight of the evidence establishes it was not uncommon for the sales representatives to be told to stand until either the individual or someone else in their group made a sale. And those that did not stand were subjected to peer pressure from their co-workers.

The sales representatives spoke to customers over the telephone. If the customer's name or address needed correcting, or if some type of memorandum was needed, the sales representative entered it into the respondent's computer system. And if a sale was made, a much lengthier notation was made via the computer keyboard. If the sales representative was standing, the individual would either kneel or bend at the waist to input the information.

Claimant testified she stood approximately 50 percent of the day in September 2000. She also testified she spent 50 to 60 percent of her time standing during the last month of her employment, which ended on November 11, 2001. And, according to claimant she bent from 12 to 18 times per day from 10 to 45 minutes for some of the calls. Claimant testified, in part:

Q. (Mr. Andersen) So 50 percent of that would be -- well, you had 20 corrections plus five, 25, would be the low end. You said 15, that would be 35. So anywhere between 12 and 18 times a day you would have to bend over and enter data into the computer, is that right?

A. (Claimant) Right.¹

But claimant's estimate that she stood 50 to 60 percent of the day is greater than most of the other sales representatives who testified. Former co-worker and sales representative Bianca Sage Ukens estimated claimant stood about 60 percent of the time during claimant's last six months at work. Ms. Ukens also testified that sometimes the sales representatives would stand for an hour up to 1½ hours before they would make a sale and would be permitted to sit. Dallas Murray, a former co-worker and present college student, agreed with claimant's estimate of standing 50 percent of the time. Claimant's daughter, Christine Briggs, who worked in a nearby sales group, testified she estimated claimant stood 10 to 11 times per day up to 10 to 15 minutes each time and sometimes up to a half hour. And Vicky Bickley, a former co-worker, testified sales representatives would stand anywhere from four to 10 times per day, depending on the circumstances, from five to 15 minutes at a time.

Another former co-worker, Dustin Dunn, testified that the sales representatives would stand during slow periods, or an average of three or four times per day for approximately five to 15 minutes. Byram N. Huff, another former co-worker and former sales representative, testified they would stand on average four or five times each day until a sale was made, but sometimes they would go for days without standing. According to Mr. Huff, he could correct information for the computer records in as little as 10 to 30 seconds. Theresa Williams, who remains employed by respondent, testified they stood about five times each day, but everyone could sit if they desired. And Anthony Suber, a former co-worker and former sales representative, testified that they stood three times a day at the most, but they could be standing from a mere few seconds on up to 30 to 40 minutes as they waited for a sale.

Suffice it to say, it was not unusual for claimant to stand at work and bend at a 90-degree angle to input data into the company computer. Claimant's former supervisor used standing as an incentive to make sales. And a sales representative who did not stand with the others was subject to scorn. The number of times per day claimant stood varied, depending upon the circumstances. Likewise, the number of times per day and the amount of time claimant bent at the waist also varied. The record, however, establishes that claimant stood and bent an appreciable amount of time.

Assuming claimant did an appreciable amount of bending in her job, both Dr. Paul S. Stein and Dr. Robert L. Eyster initially concluded claimant's job activities aggravated the degenerative disc disease in her back. Claimant, in fact, advised Dr. Stein that she stood

¹ P.H. Trans. (July 25, 2002) at 45-46.

from five to seven times per day from five to 20 minutes each time. Dr. Stein's April 19, 2005, medical report reads, in part:

Ms. Briggs says that the first time she ever had a problem with her lower back was approximately May of 2001. She recalls no specific injury or accident. At that time, she was employed as a telemarketing sales representative for MCI, where she had been employed since 1999. Most of this job was done sitting, using the telephone and computer. There was a supervisor who would take the chairs away from her group of workers when someone did not meet a quota or make sales. There were 21 people working in a bay and when this happened, they were required to work standing up and bent over until the quota was met or a sale made. **This particular activity started in 2000 and happened sometimes between five and seven times in a day, "depending on what type of mood she was in, every day at least five to seven times". Frequently they would work in this position for five minutes and up to twenty minutes at a time.** Ms. Briggs was terminated from her employment on 11/11/01 for difficulty with her supervisor that she states was unrelated to the back problem.

. . . .

7. If Ms. Briggs has a degenerative process in her low back, did the work at MCI WorldCom cause a permanent change in the physical condition of her back via permanent aggravation or acceleration of the condition?

This appears to be the primary question in regard to causation. The answer is difficult because of the lack of consistency in testimony by coworkers, some of whom describe a great deal of standing with repetitive bending, and some of whom indicate a much lesser degree, as well as an element of personal choice. However, even the latter indicate periods of standing and bending forward in order to handle the computer. I would, therefore, have to state, within a reasonable degree of medical probability (although perhaps just barely), that there was aggravation of the lower back by the work activity. One cannot state at this point whether the original aggravation would have been permanent or temporary because of the surgery done, which I believe to be a component of the current symptomatology.² (Emphasis added.)

In short, Dr. Stein related claimant's low back problems to her work after he read the testimonies from claimant's former co-workers.

² P.H. Trans. (June 23, 2005), Resp. Ex. 1.

Some of the confusion in this claim lies in the fact that it is not clear if witnesses were being asked if claimant bent 12 to 18 times per day or whether she stood that many times per day.

The Board finds, for preliminary hearing purposes, that claimant aggravated the preexisting degenerative disc disease in her back working for respondent while bending at the waist to input information into respondent's computer system. The Board finds claimant sustained micro-traumas to her low back through November 11, 2001, which was her last day of working for respondent. Accordingly, respondent and its insurance carrier's request to terminate claimant's preliminary hearing benefits should be denied.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Board affirms the June 23, 2005, preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of August, 2005.

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ K.S.A. 44-534a(a)(2).